

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

## UNITED STATES DISTRICT COURT

for the

District of \_\_\_\_\_

Division \_\_\_\_\_

Gary Matthew Shaver

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

Case No.

23-cv-4204

(to be filled in by the Clerk's Office)

## COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

## NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

**I. The Parties to This Complaint****A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

Gary Matthew Shaver

All other names by which  
you have been known:

ID Number

Current Institution

Address

65277

Department of Corrections State Penitentiary

Sioux Falls

SD

57117-5911

City

State

Zip Code

**B. The Defendant(s)**

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

Jason Mills

Job or Title (*if known*)

Unit Coordinator

Shield Number

Employer

State Penitentiary

Address

Department of Corrections State Penitentiary

Sioux Falls

SD

57117-5911

City

State

Zip Code



Individual capacity



Official capacity

Defendant No. 2

Name

Nyreen

Job or Title (*if known*)

Unit Manager

Shield Number

Employer

State Penitentiary

Address

Department of Corrections State Penitentiary

Sioux Falls

SD

57117-5911

City

State

Zip Code



Individual capacity



Official capacity

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## Defendant No. 3

Name

Teresa Bettinga

Job or Title (if known)

Warden

Shield Number

Employer

State Penitentiary

Address

Department of Corrections State Penitentiary

Sioux Falls

SD

57117-5911

City

State

Zip Code

☐

Individual capacity

☒

Official capacity

## Defendant No. 4

Name

Job or Title (if known)

Shield Number

Employer

Address

City

State

Zip Code

☐

Individual capacity

☐

Official capacity

## II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☐Federal officials (a *Bivens* claim)☒

State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

SDCL 20-9-27 Limits of State's liability SDCL 20-5-8 Good Faith offer required

SDCL 20-3-2 unlawful or impossible alternative disregarded

SDCL 20-4-9 Application of performance in absence of selection by parties

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

### III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (*check all that apply*):

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Other (*explain*) \_\_\_\_\_

### IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

On 5-13-2023 at the South Dakota State penitentiary in west hall North 58 I was assaulted by Terrance Burton with a padlock. It broke my nose shattered my cheek bone I ended up getting 11 stitches and was supposed to get plastic surgery. The 2 1/2 weeks prior I wrote the warden, Mental health, A Ltwt, the unit Coordinator, the unit manager and talked to staff. My Cellie Terrance Burton was threatening me, bullying me, kept accusing me of having the door opened up and purposely moving things around in his locked locker. With reaching out nobody helped or responded told me to deal with it even after hitting the emergency button while he was yelling at me and having me pushed against the wall. I was told to work it out and deal with it. I kept trying to move out of the cell and let any and everyone know I needed help only to be told NO. I had hit the emergency button 2-3 different times from him yelling at me and threatening me yet having me pinned to the wall and I was told to talk it out by the guards. Even after all of it I wrote a letter to the governor and mayor the letter to the mayor was denied not being legal mail



## II. Basis for Jurisdiction p3.

D. I Kited Unit Coordinator Mills about the non-stop threats, harassment, actions and behavior done by my Cellie Terrance Burton. This was ignored and I was told to "deal with it". That this isn't a motel 6 and I don't get to pick and choose where and who I live with". Under SDCL 20-5-8, SDCL 20-4-9, and SDCL 20-3-2. None of these were followed or done.

Along with Kiting the Coordinator I Kited the Unit manager Nyreen. Letting him know Mills response and expressing my concern for safety. By now I had already hit the emergency button once or twice and asked to be moved and filled out a move slip. I was denied and told "no that he isn't doing moves any more". Under SDCL 20-5-8, SDCL 20-4-9, SDCL 20-3-2. None of these were followed or done.

Along with Kiting the unit coordinator, the unit manager I Kited the Warden Teressa Bettina. I explained the situation and that I had been talking to mental health trying to cope with dealing with it and my concerns and my fear on everything that had already happened and what might happen. Explaining what my Cellie was doing and the responses from the Coordinator and the Unit manager. I never got a response back. SDCL 20-5-8, SDCL 20-4-9, SDCL 20-3-2 SDCL 20-9-27. With no response and not being moved I was assaulted with a padlock on 5-13-2023 broke my nose shattered my cheek and am being denied to get my nose fixed. None of these were followed or done.

C. What date and approximate time did the events giving rise to your claim(s) occur?

5-13-2023

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D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

I was assaulted and badly injured, The prison staff did nothing to stop it from happening.  
Birdhorse, Flood seen it happen

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#### V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

I had a Shattered Cheek bone, I got 12 Stitches, A broken nose, A Concussion,  
I was supposed to get plastic Surgery to fix my nose and did not receive it  
I was on boost for about 3 months to help heal my Cheek bone

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#### VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

I want a million per stitch

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**VII. Exhaustion of Administrative Remedies Administrative Procedures**

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

South Dakota State Penitentiary

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☐ Yes

☐ No

☒ Do not know

If yes, which claim(s)?



- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance?

South Dakota State Penitentiary

2. What did you claim in your grievance?

That both the Coordinator and managers be fired for not doing a professional job for putting me in danger

3. What was the result, if any?

NO They did their job I should of alerted staff as soon as I was feeling harassed. Housing follows Prea Codes and AIMS Code

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

I Grievenced it I Administration Remedy it and wrote the warden wrote the mayor and Governor

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

\_\_\_\_\_

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

\_\_\_\_\_

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

\_\_\_\_\_

*(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)*

### VIII. Previous Lawsuits

The “three strikes rule” bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has “on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this “three strikes rule”?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

\_\_\_\_\_

- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes  
☒ No

- B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) \_\_\_\_\_

Defendant(s) \_\_\_\_\_

2. Court *(if federal court, name the district; if state court, name the county and State)*

\_\_\_\_\_

3. Docket or index number

\_\_\_\_\_

4. Name of Judge assigned to your case

\_\_\_\_\_

5. Approximate date of filing lawsuit

\_\_\_\_\_

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition. \_\_\_\_\_

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

\_\_\_\_\_

- C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

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☐ Yes

☒ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) \_\_\_\_\_

Defendant(s) \_\_\_\_\_

2. Court *(if federal court, name the district; if state court, name the county and State)*

\_\_\_\_\_

3. Docket or index number

\_\_\_\_\_

4. Name of Judge assigned to your case

\_\_\_\_\_

5. Approximate date of filing lawsuit

\_\_\_\_\_

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition \_\_\_\_\_

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

\_\_\_\_\_



**IX. Certification and Closing**

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

**A. For Parties Without an Attorney**

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 11-29-2023

Signature of Plaintiff



Printed Name of Plaintiff

Gary Matthew Shaver

Prison Identification #

65277

Prison Address

Department of Corrections State Penitentiary

Sioux Falls

City

SD

State

57117-5911

Zip Code

**B. For Attorneys**

Date of signing: \_\_\_\_\_

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address

5277  
Gary Snaver  
DEPARTMENT OF CORRECTIONS  
STATE PENITENTIARY  
P.O. Box 5911  
Sioux Falls, SD 57117-5911  
Address Service Requested

First Federal District Clerk Eastern District  
Sioux Falls  
400 S. Phillips Ave  
Sioux Falls SD 57104

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